

Sousa, H., Trützschler, W., Fidalgo, J. & Lameiras, M. (eds.) (2013)  
*Media Regulators in Europe: A Cross-Country Comparative Analysis*  
Braga: CECS, University of Minho  
ISBN: 978-989-97244-7-1  
pp. 180-191

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# United Kingdom

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## 1. LEGAL FRAMEWORK

The main media and communications regulatory body in the UK is the Office of Communications (Ofcom), with offices in London. Ofcom is a statutory body, organizationally separated from government and operating at arm's length from it, created by the Office of Communications Act 2002<sup>1</sup>. Its main powers and functions were conferred on it by the Communications Act 2003<sup>2</sup>, which sets out no less than 263 separate statutory duties<sup>3</sup>. Ofcom is accountable to Parliament to which it reports on its activities annually. As will be detailed below, Ofcom has regulatory duties across most of the 'converging' electronic communications sector, often in an advisory capacity to government in areas such as media ownership rules and public service broadcasting, and is in charge of implementing and enforcing legislation. Other Acts of Parliament under which Ofcom operates include the Broadcasting Acts 1990<sup>4</sup> and 1996<sup>5</sup>, the Human Rights Act 1998<sup>6</sup>, the Enterprise Act 2002<sup>7</sup>, the Wireless Telegraphy Act 2006<sup>8</sup>, and the Digital Economy Act 2010<sup>9</sup>.

There are other governmental and non-governmental bodies that have powers and duties in relation to media and communications matters. The two main government departments with policy responsibilities over media and communications are the Department for Culture, Media and Sport (DCMS) and the Department for Business, Innovation and Skills (BIS). The two general competition authorities, the Office of Fair Trading (OFT) and the

<sup>1</sup> See <http://www.legislation.gov.uk/ukpga/2002/11/contents>

<sup>2</sup> See <http://www.legislation.gov.uk/ukpga/2003/21/contents>

<sup>3</sup> See 'A Case study on Public Sector Mergers and Regulatory Structures', available at <http://www.ofcom.org.uk/about/what-is-ofcom/a-case-study-on-public-sector-mergers-and-regulatory-structures/>

<sup>4</sup> See <http://www.legislation.gov.uk/ukpga/1990/42/contents>

<sup>5</sup> See <http://www.legislation.gov.uk/ukpga/1996/55/contents>

<sup>6</sup> See <http://www.legislation.gov.uk/ukpga/1998/42/contents>

<sup>7</sup> See <http://www.legislation.gov.uk/ukpga/2002/40/contents>

<sup>8</sup> See <http://www.legislation.gov.uk/ukpga/2006/36/contents>

<sup>9</sup> See <http://www.legislation.gov.uk/ukpga/2010/24/contents>

Competition Commission, also undertake competition investigations in media and communications markets, where Ofcom has concurrent powers.

As will be discussed in more detail below, there are a number of industry bodies operating either self-regulatory or co-regulatory schemes in relation to various aspects of media and communications regulation (with Ofcom, in the latter case, acting as 'back-stop regulator')<sup>10</sup>. These include: the Press Complaints Commission (PCC); the Advertising Standard Authority (ASA); the Internet Watch Foundation (IWF); the Authority for Television On Demand (ATVOD); the British Board of Film Classification (BBFC); PhonePayPlus; the Independent Mobile Classification (IMCB).

This report will focus on Ofcom as the main sectorial regulator but will also discuss Ofcom's working relations with some of the above-mentioned bodies, in particular in areas of media and communications where co-regulatory arrangements are in place.

## 2. FUNCTIONS

Ofcom presides over most of the converging electronic communications sector, including broadcasting, telecommunications and wireless communications services (i.e., management of the radio spectrum). Its creation in 2003 involved the merger of five pre-existing regulators responsible for specific areas of media and telecommunications regulation. Under the pre-Ofcom regulatory regime, television regulation was divided between the Broadcasting Standards Commission (BSC), responsible in matters of standards and fairness, and the Independent Television Commission (ITC), a statutory body that licensed and regulated commercial television services, and whose responsibilities included economic regulation, advertising regulation and public service obligations. The other three 'legacy' regulators that Ofcom replaced were: the Office of Telecommunications (OfTel, a non-ministerial government department responsible for the licensing and regulation of telecommunications operators); the Radio Authority (a statutory body responsible for the regulation of commercial radio broadcasting); and the Radiocommunications Agency (a departmental agency responsible for allocation and supervision of the radio spectrum)<sup>11</sup>.

Ofcom was created in anticipation of technological and market convergence (Smith 2006). Its advocates (e.g., Collins and Muroi 1996) argued that a single regulator encompassing both broadcasting and telecommunications would contribute to the simplification and rationalization of the regulatory framework, and would reduce costs and inefficiencies<sup>12</sup>.

Ofcom's functions and duties are wide-ranging. In relation to *media* regulation, they include:

<sup>10</sup> See Ed Richards, 'Models of Media Regulation', 5 October 2011, available at: <http://media.ofcom.org.uk/files/2012/02/Teach-in-presentation-by-Ed-Richards-05-10-11.pdf>

<sup>11</sup> Since 1 October 2011, Ofcom has also been given responsibility over postal services, having taken over from the previous regulator Postcomm. The relevant legislation is The Postal Services Act 2011. See <http://www.legislation.gov.uk/ukpga/2011/5/contents>

<sup>12</sup> On the other hand, critics warned against the danger that a single regulator would concentrate too much power and that there would be uncertainty over its hierarchy of values, having to oversee sectors (broadcasting and telecommunications) with different regulatory traditions (see Section 3 below).

- Licensing of all radio and television broadcasters, and monitoring compliance with the conditions set out in the licenses, including a duty to be satisfied that persons holding broadcasting licences are 'fit and proper';
- Setting standards for television and radio programmes on matters relating to taste, fairness and privacy, and monitoring broadcasters' compliance with Ofcom's Broadcasting Code;
- Reviewing Public Service Broadcasting (PSB) at least every five years<sup>13</sup>;
- Reviewing Media Ownership Rules at least every three years<sup>14</sup>;
- Concurrent competition powers with OFT in respect of anticompetitive agreements and abuses of a dominant position in the sectors regulated by Ofcom;
- Evaluating 'media public interest considerations' in relation to certain media mergers, triggered by an intervention notice issued by the Secretary of State;
- Regulating the scheduling of broadcasting advertising, sponsorship, and product placement;
- Promoting media literacy, primarily through the undertaking of research to inform policy;
- More recently, establishing a framework to implement provisions in the Digital Economy Act 2010 around online copyright infringement, one of Ofcom's 2012/13 strategic priorities<sup>15</sup>.

Under the Communications Act 2003, Ofcom has also been given some regulatory powers over the BBC. This has marked a departure from the self-regulatory regime historically governing the UK's main public service broadcaster. Regulatory responsibilities are now divided between Ofcom and the BBC Trust, 'the sovereign body within the BBC'<sup>16</sup>. Ofcom's Broadcasting Code applies to the BBC, as well as commercial broadcasters, but only in respect of standards on harm and offence, privacy and fair treatment. The BBC Trust retains responsibility over matters of accuracy and impartiality in news and current affairs programming. Under the BBC's New Charter and Agreement that took effect in 2007 and remains valid until 2016, Ofcom is also responsible for conducting market impact assessment for proposed new BBC services or for significant changes to existing ones. Market impact assessments are one of the two elements of the Public Value Tests, the other being the Public Value Assessments undertaken by the BBC Trust. Finally, Ofcom is in charge, concurrently with the BBC Trust, of monitoring BBC's compliance with obligations relating to independent television production quotas, as well as news and public affairs quotas, programming for the nations and regions, and quotas for original productions.

<sup>13</sup> Under the Communications Act 2003, all terrestrial broadcasters, namely BBC, ITV, Channel 4 and Channel 5, are designated as 'public service broadcasters', irrespective of their ownership and funding. Ofcom has completed two major PSB reviews so far.

<sup>14</sup> The present UK's Coalition government is considering reducing the frequency of both the public service broadcasting and media ownership rules reviews, as part of its broader agenda to reduce the budget, size and scope of activities of independent regulatory authorities (see Lunt and Livingstone 2012).

<sup>15</sup> See 'Ofcom Annual Plan 2012/13', available at [http://www.ofcom.org.uk/files/2012/03/Annual\\_Plan\\_2012-13.pdf](http://www.ofcom.org.uk/files/2012/03/Annual_Plan_2012-13.pdf)

<sup>16</sup> See 'Memorandum of Understanding between Ofcom and the BBC Trust', available at: <http://www.ofcom.org.uk/about/how-ofcom-is-run/committees/ofcom-bbc-joint-steering-group/memorandum-of-understanding-between-the-office-of-communications-ofcom-and-the-bbc-trust/>

In a number of areas Ofcom has delegated powers to industry regulatory bodies establishing what are referred to as 'co-regulatory partnerships'. This is in accordance with the legislative mandate. Under the Communications Act 2003, Ofcom is required to promote the development of self-regulation. Since Ofcom's creation, there has indeed been a move towards a greater role for 'self-regulation', although, in fact, the arrangements put in place are better described as 'co-regulatory' since Ofcom, as the statutory regulator, typically retains certain powers and responsibilities. An important area where a 'co-regulatory partnership' has been put in place is the regulation of broadcasting advertising *standards*. Ofcom devolved the exercise of this function to the Advertising Standard Authority (ASA) in November 2004<sup>17</sup>. The regulation of sponsorships remains under Ofcom's responsibility, and so does the regulation of advertising *scheduling*, as already mentioned. The ASA is a non-statutory body funded by the advertising industry. Its main function is to regulate the content of all forms of advertising, sales promotions and direct marketing by investigating complaints and adjudicating whether advertising complies with its standards codes. As a 'backstop regulator', Ofcom remains ultimately responsible for ensuring that broadcasters observe relevant standards and retains the power to require ASA to amend the code, which it did once in 2007 when introducing a ban on advertising for products that are high in fat, salt or sugar during children's television airtime. Likewise, Ofcom must approve any change to the code recommended by the ASA. Finally, in the event of ASA failing to secure advertisers' compliance with its decisions, Ofcom can step in and force compliance on broadcasters and impose sanctions.

An area where Ofcom has recently put in place similar co-regulatory arrangements is the regulation of on demand programme services (i.e., according to the terminology adopted by the European Union, non-linear TV-like services)<sup>18</sup>. These services are regulated under the Communications Act 2003 as amended in December 2009 to implement the European Union's 2007 Audio Visual Media Service Directive. In 2010 Ofcom delegated powers to the Authority for Television On Demand (ATVOD) in matters of editorial content (regulation of advertising on video-on-demand services is responsibility of the ASA). Like the ASA, ATVOD is a non-statutory body funded by a fee paid by on demand service providers, whose board comprises five independent and four non-independent (i.e. industry representatives) members. Its main task is to ensure that on demand service providers falling within the scope of regulation notify it and comply with its standards code in matters of incitement to hatred and protection of minors. Ofcom retains similar powers as those described earlier in relation to advertising, namely approval of the code and changes to it, as well as enforcement powers.

To summarise, Ofcom's duties and powers in relation to media regulation are wide-ranging. Ofcom exercises its statutory functions either solely or through co-regulatory schemes involving industry bodies such as ASA and ATVOD as co-regulators. However, there are areas (Internet content, the press) and institutions (the BBC) that remain wholly or partly outside of Ofcom's purvey. In the words of its Chief Executive Ed Richards, overall 'Ofcom

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<sup>17</sup> For an assessment, see Dacko and Hat (2005).

<sup>18</sup> For a discussion see Dawes (2011).

has extensive supervisory powers in relation to TV and radio broadcasting content. Our role in relation to Internet services is much more limited. We have only an extremely narrowly defined – and rarely triggered – role in relation to the regulation of newspapers. We have no role in relation to newspaper content’<sup>19</sup>.

Regulation of newspaper content is currently a highly topical and hotly contested issue. In the wake of the News International phone hacking’ scandal<sup>20</sup>, in July 2011 the government set up a public enquiry into the culture, practices and ethics of the press led Lord Justice Leveson (the so-called ‘Leveson inquiry’)<sup>21</sup>. The UK press is currently self-regulated by the Press Complaint Commission, an industry body established in 1990 that is now widely regarded as toothless and ineffective. There are societal calls for subjecting the newspaper sector to statutory regulation, possibly involving Ofcom. But there is also strong opposition to statutory regulation of the press. The Leveson inquiry is expected to publish a report with recommendations to government for a more effective system of press regulation later in the year. At the time of writing (July 2012), the most likely outcome will be a strengthened system of self-regulation.

### 3. LEGITIMIZING / UNDERLYING VALUES

The underlying values informing Ofcom’s regulatory activity are found in primary legislation. Section 3(1) of the Communications Act 2003 sets out Ofcom’s core purposes as follows:

It shall be the principal duty of Ofcom, in carrying out their function, a) to further the interests of *citizens* in relation to communications matters (i.e. matters in relation to which we have functions); and (b) to further the interests of *consumers* in relevant markets, where appropriate by promoting competition. (emphasis added).

In the words of Ofcom’s chairman Colette Bowe ‘meeting these two duties is at the heart of everything we [Ofcom] do’<sup>22</sup>.

During the passage of the Act the question of in whose interest Ofcom should regulate (consumers versus citizens) was hotly debated and fought over in Parliament and outside it. This ‘discursive struggle’ over Ofcom’s core purposes is recounted by Peter Lunt and Sonia Livingstone (2012: 41-63). They argue that ‘what might, at first sight, seem to be mere semantic struggles in fact pointed to a profound philosophical difference with very practical consequences’ (p. 42). Civil society coalitions and defenders of public service-type and socially-oriented regulation secured a major victory in Parliament when they managed to have an amendment passed that put citizen interest alongside consumer interest. Earlier drafts of

<sup>19</sup> See ‘Witness Statement of Ed Richards to the Leveson Inquiry into the Culture, Practice and Ethics of the Press’, available at <http://media.ofcom.org.uk/files/2012/02/Witness-Statement-of-Ed-Richards.pdf>, p. 25.

<sup>20</sup> The News International phone hacking scandal is an on-going controversy involving the defunct News of the World (closed in July 2011), the UK’s best-selling Sunday newspaper published by News International, a subsidiary of Rupert Murdoch’s News Corporation. As reported in the relevant Wikipedia entry, ‘employees of the newspaper were accused of engaging in phone hacking, police bribery, and exercising improper influence in the pursuit of publishing stories’.

<sup>21</sup> See <http://www.levesoninquiry.org.uk/>

<sup>22</sup> See ‘Witness Statement of Colette Bowe to the Leveson Inquiry into the Culture, Practice and Ethics of the Press’, available at <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-Colette-Bowe.pdf>

the communications bill only referred to the interests of 'consumers'. Such a redefinition of Ofcom's core purposes went some way towards mitigating concerns that as a 'convergent' regulator Ofcom would give priority to an economic and competition-oriented approach to regulation of the kind applied to telecommunications. However, it did not contribute to resolve underlying ambiguities over Ofcom's underlying values, and the hierarchy between them. Commentators have pointed out that Ofcom must 'balance numerous broad and sometimes conflicting economic and cultural policy considerations' (Doyle and Vick 2005: 77). It has also been noted that the Communications Act is generally informed by a deregulatory thrust and that among Ofcom's regulatory principles is a 'bias against intervention' (see e.g. Hitchens 2006). Ofcom's duty to further citizen interest, which can require a robust and interventionist approach to regulation, might thus be difficult to reconcile with the general thrust of the legislation. Lunt and Livingstone (2012) argue that in its interpretation of its core purposes, as reflected for instance in the institutional structures that it set up for itself, Ofcom has prioritized consumer over citizen interest. They note that from 2003 onward Ofcom 'established institutional structures and roles relating to consumer policy' (p. 50), but that 'strikingly, little equivalent activity or accountability was forthcoming regarding actions to further citizen's interests' (Ibid), further commenting that 'Ofcom gives the impression of being more comfortable dealing with consumer than with citizenship issues' (p. 62), probably because the latter are difficult to define and less amenable to quantitative analysis.

Ofcom's new strategic priorities, set out in 2011 in the context of a significant reduction in the regulator's budget (see Section 7 below)<sup>23</sup>, seem indeed to point to the marginalization of social/cultural concerns in its policy agenda. Only one of these five strategic aims reflects citizen-oriented concerns ('To provide appropriate assurance to audiences on [broadcasting] standards'), whereas three other priorities reflect Ofcom's primary concern with economic-type regulation ('To promote effective and sustainable competition'; 'To promote efficient use of public assets'; 'To help markets work for consumers').

#### 4. PERFORMANCE

Information on the work undertaken by Ofcom during the year, and a self-assessment of its performance against the strategic priorities set in the annual plan, are found in Ofcom's Annual Reports. The picture emerging from these reports is that of a very active and busy regulator, as evidenced, among others, by the number of public consultations and regulatory impact assessments undertaken annually (e.g., respectively, 47 and 46 in 2011/12), the enforcement activity in relation to television and radio content (7,551 cases assessed in 2011/12) and the substantial investment in research, including annual reports and audience/consumer surveys (e.g., the Communications Market Reports) as well as *ad hoc* research.

There appears to be a clear division of labour between Ofcom and the industry bodies with which it has co-regulatory schemes, although of course this is not an assessment of whether co-regulatory arrangements are more or less appropriate and effective

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<sup>23</sup> See 'Ofcom Annual Plan 2012/13', available at: <http://www.ofcom.org.uk/about/annual-reports-and-plans/annual-plans/annual-plan-201213/>



than statutory regulation. Ofcom's Chief Executive Ed Richard has recently commented that 'Ofcom's experience of co-regulation to date has been mostly positive'<sup>24</sup>. Ofcom has developed a set of criteria for assessing whether any of its functions should be delegated to a co-regulatory body<sup>25</sup>. At the time of writing, Ofcom is undertaking a formal review and applying these criteria to evaluate how co-regulation of editorial content on demand programme services has worked since its inception in 2010 and whether the ATVOD remains 'an appropriate regulatory authority'<sup>26</sup>.

## 5. ENFORCEMENT MECHANISMS / ACCOUNTABILITY

### 5.1. ENFORCEMENT MECHANISMS

Ofcom has statutory powers<sup>27</sup> to impose sanctions against a radio or television broadcaster in the event of a breach of its code and/or the conditions of the broadcaster's licence. The procedure is generally initiated by complaints from listeners and viewers. Ofcom has a duty to assess any complaint it receives. Individual complaints received by Ofcom are assigned to cases. In its latest Annual Report<sup>28</sup>, Ofcom revealed to have assessed 21,484 complaints about harmful and offensive material in 2011/12 ('broadcasting standards') and 288 complaints about unfairness and/or unwarranted infringements of privacy, for a total of 7,551 cases. Ofcom does not uphold most complaints. For instance, in 2011/12, in relation to broadcasting standards cases, out of a total of 7,263 cases, 6,816 were either found not to be in breach of the Broadcasting Code or outside Ofcom's remit. Some of the other cases (57) were 'resolved' (when a broadcaster takes immediate and appropriate steps to remedy a breach and Ofcom decides not to record it). The remaining cases were further investigated and 248 investigated cases resulted in breaches of the Broadcasting Code.

If it considers that a broadcaster has 'deliberately, seriously, repeatedly and/or recklessly' breached the Broadcasting Code or any other licence condition, Ofcom has the power to:

- Issue a direction not to repeat a programme or advertisement, or a direction to broadcast a correction or a statement of Ofcom's findings;
- Impose a financial penalty (for commercial television or radio licensees, up to £250,000 or 5% of the broadcaster's 'Qualifying Revenue', whichever is the greater);
- In the most severe cases, shorten, suspend or (in certain cases) revoke a licence.

In its latest Annual Report, Ofcom reports to have applied financial penalties in 10 cases during the last financial year. In one case (More FM Ltd) the sanction was to reduce the period for which the licence is to be in force by a period of twelve months.

<sup>24</sup> See 'Witness Statement of Ed Richards to the Leveson Inquiry into the Culture, Practice and Ethics of the Press', available at <http://media.ofcom.org.uk/files/2012/02/Witness-Statement-of-Ed-Richards.pdf>, p. 34.

<sup>25</sup> See Ofcom (2008) 'Identifying Appropriate Regulatory Solutions: Principles for Analysing Self- and Co-regulation', available at: <http://stakeholders.ofcom.org.uk/consultations/coregulation/statement/>

<sup>26</sup> See 'ATVOD Review' available at: <http://stakeholders.ofcom.org.uk/broadcasting/tv/video-on-demand/>

<sup>27</sup> Under the Broadcasting Act 1990 and 1996, and in some cases the Communications Act 2003, depending on the type of licence.

<sup>28</sup> See 'Ofcom Annual Report 2011/12', p. 112-115.

Broadcasters and affected media workers can appeal against an Ofcom decision via the judicial system.

### 5.2. ACCOUNTABILITY

Ofcom is accountable to Parliament, but is intended to operate at arm's length from the State. It has a statutory duty to publish an annual report and present it to Parliament. In the annual report, Ofcom must provide 'a summary of the manner in which they have resolved conflicts arising from their general duties in "important" cases'. The annual report is made available on Ofcom's website in July of every year<sup>29</sup>. Another mechanism through which the regulator is held accountable to Parliament is its duty to give evidence to parliamentary committee inquiries. In the course of 2011/12, Ofcom gave evidence on issues ranging from privacy to media plurality, and from the future of investigative journalism to superfast broadband.

Some of the regulatory principles informing Ofcom's activities are intended to enhance its accountability to various stakeholders, and, more generally, public engagement and transparency in the regulatory process. Under the terms of the Communications Act 2003, Ofcom's statutory principles include:

- A duty to publish an Annual Plan, publicly reviewed and made available on the regulator's website<sup>30</sup>, where strategic priorities and policy objectives for the forthcoming year are clearly articulated;
- A duty to consult widely before deliberating and to assess the impact of proposed regulatory action;
- A duty to ensure that its interventions are 'evidence-based, proportionate, consistent, accountable and transparent in both deliberation and outcome'.
- A duty to undertake consumer and audience research, which, as noted by Lunt and Livingstone (2012), in addition to contributing to evidence-based policy-making, is also regarded by Ofcom 'as a valuable means of reaching the wider public' (p. 79), especially 'those who, for whatever reason, do not find themselves sufficiently represented among those parties who put themselves forward in the consultation process' (Ibid).

Lunt and Livingstone (2012) provide a careful and insightful assessment of Ofcom's achievements in engaging the widest possible range of stakeholders, including civil society, consumer groups and individuals, through public consultation, research and meetings like the Consumer Forum on Communications, as well as some of the intrinsic limitations of these mechanisms working against the possibility of truly inclusive policy-making.

To embed consumer and citizen representation into the very structures of Ofcom, and thus further enhance its accountability towards the public, the Communications Act required Ofcom to establish, respectively, a Consumer Panel and a Content Board (for more

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<sup>29</sup> See <http://www.ofcom.org.uk/about/annual-reports-and-plans/>

<sup>30</sup> See <http://www.ofcom.org.uk/about/annual-reports-and-plans/>



details over the structure and composition of these bodies see Section 6 below). Expected to represent citizen interests, the Content Board is essentially given responsibility over content broadcasting regulation, in a rather dubious equation of citizen interest with merely broadcasting issues (see Lunt and Livingstone 2012). In the words of its former chairman, the Content Board is charged with 'understanding, analyzing and championing the voices and interest of the viewer, the listener and citizen' and examining 'issues where the citizen interest extends beyond the consumer interest with focus on those aspects of the public interest which competition and market forces do not reach'<sup>31</sup>.

The Consumer Panel (renamed Communications Consumer Panel in 2008) is in charge to represent specifically the interests of consumers to Ofcom, as well as Parliament, government and European institutions. Lunt and Livingstone (2012: 75) note that the Communications Consumer Panel 'may be seen to embed the concerns of statutory civil society body within the regulator'. The areas of consumer interest covered by the Panel explicitly exclude matters related to broadcasting and other type of content delivered over electronic communications networks<sup>32</sup>.

## **6. INSTITUTIONAL ORGANIZATION / COMPOSITION**

Ofcom's main decision-making and governing body is the Board responsible for providing overall strategic direction. Under the Office of Communications Act 2002, the Board consists of up to ten members, a majority of whom are non-executive members including a Chairman and up to three are executive members (including the Chief Executive).

The Chairman and the non-executive members are appointed by the government in the person of the Secretary of State for Culture, Media and Sport for a period of five years. In turn, the Chairman and other non-executive members of the Board appoint the Chief Executive (subject to the approval of the relevant Secretary of State). They also appoint any other executive Board member from among Ofcom's employees.

Ofcom's Executive Committee, led by the Chief Executive, is responsible for running the organization and is accountable to the Board. It operates alongside Ofcom's Policy Executive, which also comprises senior executives and is responsible for the development of Ofcom's overall regulatory agenda and providing a forum for discussion.

Charged with the task of performing functions related to broadcasting content and media literacy, the Ofcom Content Board is a committee of the main Board comprising ten members appointed by the Ofcom Board. A majority of its members is made up of individuals who are neither members nor employees of Ofcom, some of whom must have extensive broadcasting experience. The chairman and at least one other member of the Content Board must be non-executive members of the Board (other than their chairman). The Content Board must also include a representative for each of the nations (England, Scotland, Wales and Northern Ireland).

<sup>31</sup> See 'Witness Statement of Philip Graph to the Leveson Inquiry into the Culture, Practice and Ethics of the Press', available at <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-Philip-Graf.pdf>

<sup>32</sup> For an assessment of the role of consumer representation in communications policy-making in the UK see Tambini (2012).

As discussed in Section 5 above, consumer interest is instead championed by the Communications Consumer Panel, a policy advisory group established under the Communications Act 2003, independent of Ofcom but 'resourced and administered from within Ofcom' (Lunt and Livingstone 2012: 75). As stated on its website, 'The Panel is made up of independent experts with experience from many different fields: consumer advocacy, regulation, the third sector, academia, the trade union movement, market research and industry'<sup>33</sup>.

Internally, Ofcom has recently been reorganized into seven 'groups' whose directors report directly to Ofcom's Chief Executive<sup>34</sup>:

- Content;
- International and Regulatory Development;
- Legal;
- Consumer;
- Strategy, Chief Economist and Technology;
- Competition Policy; Spectrum Policy;
- Operation.

As of 31 March 2011, Ofcom had 720 employees, down from 873 in 2010. In the course of 2011 Ofcom implemented a redundancy plan in order to reduce staff costs and meet savings targets required by government (see Section 7 below).

## 7. FUNDING

Ofcom is funded by a combination of government funding and industry fees<sup>35</sup>. Total income for the year ending on 31 March 2011 was £144m. Two thirds of that income came from government, specifically a grant-in-aid from the Department for Business, Innovation and Skills (BIS), totaling 93.8m. This is supplemented by a small grant-in-aid from the Department of Culture, Media and Sport (DCMS) to cover Ofcom's activities in respect of media literacy (amounting to £0.5m in 2010/11)<sup>36</sup>. The remaining one third of Ofcom's income is generated through fees paid by the industry, namely telecommunications operators ('network and services administrative and application fees') and broadcasting licensees ('Broadcasting Act licence and application fees'). In 2010/11, telecommunications and broadcasting amounted to £28m and £20m respectively.

Nearly 50% of the total costs incurred by Ofcom in 2010/11 were staff costs (salaries, benefits, pensions and national insurance costs). The rest of the regulator's operating costs were incurred in respect of several activities, most significantly: professional fees, outsourced services, audience and consumer research, spectrum clearance scheme, premises

<sup>33</sup> See <http://www.communicationsconsumerpanel.org.uk/>

<sup>34</sup> See Oxford Media Convention. Speech by Ed Richards, January 24, 2011, available at: <http://media.ofcom.org.uk/2011/01/24/oxford-media-convention-speech-by-ed-richards/>

<sup>35</sup> See 'Ofcom Annual Report 2010/11', Section D, available at <http://www.ofcom.org.uk/about/annual-reports-and-plans/annual-reports/annual-report-2010-11/>. Ofcom Annual report is published in July and is available in English and Welsh. Information provided in this section comes from Ofcom's 2010/11 Annual Report.

<sup>36</sup> The role of main sponsor body was assigned to DCMS from BIS from 01 April 2011.

costs, administration and office expenses, information and technology costs, and amortisations and depreciations.

Ofcom has not been spared by the major public sector cuts implemented by the UK's present Coalition government in response to the financial crisis. The regulator has been required to significantly reduce its expenditure. The result of an internal review completed in February 2011 was to identify savings, entailing significant job losses, intended to reduce Ofcom's budget by 28% in real terms over the following four years beginning from April 2011. Ofcom's total budget for 2011/12 was set at £115.8m. The reduction in the budget was made possible, as put by Ofcom in its Annual Report, through 'a combination of efficiencies, streamlining project management and governance and ceasing some activities altogether'<sup>37</sup>. As an example of an area where Ofcom might be asked to do less, the Annual Report mentions the Government's proposal to reduce the frequency of media ownership and public service broadcasting reviews (currently every three and five years respectively). But the report also notes that, at the same time, Ofcom has been asked to take on new responsibilities, for example, implementing the provisions in the Digital Economy Act and the regulation of postal services.

## 8. REGULATION IN CONTEXT

Some of the key, distinctive features of the UK media and communications system include:

- A strong tradition of public service broadcasting. In the UK all terrestrial broadcasters, namely BBC, ITV, Channel 4 and Channel Five, are designated as 'public service broadcasters', irrespective of their ownership and funding (ITV, Channel 4 and Channel 5 are commercially funded, and ITV and Channel 5 are for-profit companies). As public service broadcasters, they are required to fulfill public service obligations, although in recent years these have been reduced for the commercial public service broadcasters (especially ITV and Channel 5). UK's main public service broadcaster is the BBC, publicly funded via the licence fee and operating under the most comprehensive public service remit of all UK's 'public service broadcasters. By international standards, the BBC is a very well-resourced public broadcaster and enjoys relative independence of government;
- The comparatively minor role played by local media vis-à-vis national media (both in the press and broadcasting sectors);
- Generally, a high take-up of new communications technologies, including digital TV (94% of homes in 2011), and broadband Internet (76% of homes in 2011);
- A wealthy market – e.g., the UK is by far the largest pay-TV market in Europe; online advertising revenues are the highest in Europe.
- A newspaper market characteristically divided into the tabloid/popular and broadsheet/quality segments, the latter displaying high professional standards, while the former, the largest segment in terms of circulation and readership, now at the

<sup>37</sup> See 'Ofcom Annual Report 2010/11', p. 40.

center of controversy over its practices and professional standards. The phone-hacking scandal which erupted in the course of 2011 revealed widespread unethical, and even illegal practices among tabloid journalists and led to the closure in July 2011 of the best selling Sunday newspaper, *News of the World* (owned by Rupert Murdoch's News Corp);

- High level of press and cross-media ownership concentration, with Rupert Murdoch's News Corp controversially holding a dominance position in both the national newspaper and pay-TV sectors (respectively through News International and BSkyB).

In keeping with its commitment to researching communications markets 'constantly' (one of its regulatory principles), Ofcom provides a rich source of updated figures and data on the UK media and communications markets, technologies and audiences, notably through its annual Communications Market Reports, Public Service Broadcasting Report and regular surveys of media consumption. This research is available on Ofcom's website.

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